

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Damien Eugene Brooks,

Petitioner,

V.

Attorney General of the State of Arizona,
Ryan Thornell¹,

Respondents.

No. CV-22-002145-PHX-GMS-CDB

ORDER

and

DENIAL OF CERTIFICATE OF APPEALABILITY AND IN FORMA PAUPERIS STATUS

Pending before the Court is the Report and Recommendation (“R&R”) of Magistrate Judge Camille D. Bibles (Doc. 16) regarding petitioner’s Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254 (Doc. 1). The R&R recommends that the Petition be denied. The Magistrate Judge advised the parties that they had fourteen days to file objections to the R&R. (R&R at 34 (citing *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003)). Petitioner filed objections on July 24, 2023 (Doc. 17) and Respondents filed a reply on July 26, 2023 (Doc. 18).

The Court has considered the objections and reply and reviewed the Report and Recommendation *de novo*. *See* Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1) (stating that the court must make a *de novo* determination of those portions of the Report and Recommendation to which specific objections are made). In his objection, Mr. Brooks

¹ Ryan Thornell is the current Director of the Arizona Department of Corrections, Rehabilitation, and Reentry. Pursuant to Federal Rule of Civil Procedure 25(d), Thornell is automatically substituted for Joe Profiri as the party of record.

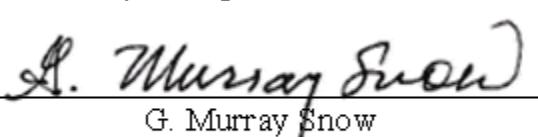
1 merely makes the argument that he was indicted based on perjured testimony and that he
2 has been subjected to an ex post facto change in punishment since the date of the alleged
3 events. The Court agrees with the Magistrate Judge's determinations in these respects, and
4 further notes that Mr. Brooks objections do not substantively address Judge Bible's
5 recommendation refuting them, or her resulting conclusions about procedural default,
6 failure to properly state a claim for habeas relief, or were appropriately denied by the state
7 courts. The Court thus accepts the recommended decision within the meaning of Rule
8 72(b), Fed. R. Civ. P., and overrules Petitioner's objections. *See* 28 U.S.C. § 636(b)(1)
9 (stating that the district court "may accept, reject, or modify, in whole or in part, the
10 findings or recommendations made by the magistrate").

11 **IT IS ORDERED** that Report and Recommendation of the Magistrate Judge (Doc.
12 16) is accepted.

13 **IT IS FURTHER ORDERED** that the Clerk of the Court enter judgment denying
14 and dismissing Petitioner's Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C.
15 § 2254 (Doc. 1) with prejudice. The Clerk shall terminate this action.

16 Rule 11 of the Rules Governing Section 2254 Cases in the United States District
17 Courts requires the district court to "issue or a deny a certificate of appealability when it
18 enters a final order adverse to the applicant." Rule 11, 28 U.S.C. foll. § 2254. Should
19 Petitioner seek a certificate of appealability, a certificate of appealability should be denied
20 because he has not made a substantial showing of the denial of a constitutional right.

21 Dated this 27th day of September, 2023.

22 
23 G. Murray Snow
24 Chief United States District Judge